IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2007

CORAM

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE D.MURUGESAN

W.P.Nos.33953, 7879 & 10661 of 2006

K.R.Ramaswamy @ Traffic Ramaswamy .. Petitioner in W.P.No.33953/06

Kanyakumari District Malayala
Samajam (Reg.No.15/79)
Malayala Bhavan
Post Office Junction
Kuzhithurai 629 163
Kanyakumari District
rep.by its President
K.Chandra Sekhara Pillai .. Petitioner in W.P.No.7879/06

Kanyakumari District Nair
Service Society
rep.by the President
V.Sreekumaran Nair
No.1-56 E, "Ushas"
Christopher Nagar, Peruvila
Vettoournimadam Post
Nagercoil
Kanyakumari District .. Petitioner in W.P.No.10661/06

-vs-

State rep.by
Special Officer
Chief Minister's Special Cell
Government of Tamil Nadu
Chennai 600 009

Secretary
Education Department
Government of Tamil Nadu
Chennai 600 009

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The Director Matriculation School Education College Road, Chennai 600 006 Tamil Language Academy rep.by its President R.Gandhi Senior Advocate (R4 impleaded as per order dt. 17.4.07 by the Hon'ble CJ/DMJ in MP.No.2/07 in WP 33953/06)	..	Respondents 1 to 4 in W.P.No.33953/06
The State of Tamilnadu rep.by Secretary to Government Law Department Fort St.George Chennai 600 009 Secretary to Government School Education Department Fort St.George Chennai 600 009 Director of School Education College Road Chennai 600 006 Director of Matriculation Schools College Road Chennai 600 006 Director of Elementary School Education College Road Chennai 600 006	..	Respondents 1 to 5 in W.P.No.7879/06
The State of Tamil Nadu rep.by its Law Secretary Law Department Fort St.George Chennai 600 009	..	Respondent in W.P.No.10661 of 2006

W.P.No.33953 of 2006 filed under Article 226 of The Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents to make necessary changes in the G.O.186/F1/06 dated 17.06.06, the safe guard the minority languages speaking children fundamental rights as per the representation dated 17.7.06 and 5.8.06.

W.P.No.7879 of 2006 filed under Article 226 of The Constitution of India, praying for the issue of a Writ of Declaration, declaring Tamil Nadu Act No.13 of 2006 (The Tamil Nadu Tamil Learning Act, 2006) unconstitutional and null and void in so far as the petitioner is concerned.

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W.P.No.10661 of 2006 filed under Article 226 of The Constitution of India, praying for the issue of a Writ of Declaration, declaring the Act No.13 of 2006 (learning of Tamil as one of the subjects in all schools in the State of Tamilnadu) published in Tamilnadu Government Gazette, Chennai dated 12.06.2006 as ultra vires the Constitution of India in so far as the petitioner is concerned.

For Petitioners :: Mr.K.R.Ramaswamy @ Traffic Ramaswamy
Petitioner in person in W.P.No.33953 of 2006

Mr.V.Raghavachari for Mr.V.Madhusudanan in W.P.Nos.7879 & 10661/06

For Respondents :: Mr.R.Viduthalai
Advocate General
assisted by
Mr.M.Sekar
Spl. Govt. Pleader (Edn.)
and Mr.V.R.Thangavelu
Government Advocate for the State

Mr.R.Gandhi
Senior Counsel as
party-in-person for R4
in W.P.No.33953 of 2006

ORDER

D.MURUGESAN, J.

In order to ensure that all students studying in standards I to X in all schools in the State to learn Tamil as compulsory subject, the Government of Tamil Nadu, as a policy, enacted the Tamil Nadu Tamil Learning Act, 2006 (Act No.13 of 2006) (hereinafter referred to as the "Act"), which received the assent of the Governor on the 9th June, 2006, and published in the Tamil Nadu Government Gazette Extraordinary on 12th June, 2006. The relevant provisions of the "Act" read as follows:-

> Section 2(e) of the Act defines a "school" as meaning,--
> (i) any Primary School, Middle School, High School or Higher Secondary School maintained by the State or Local Bodies; or
> (ii) any Primary School, Middle School, High School or Higher Secondary School established and administered or maintained by any private educational agency including minority school established and administered under clause (1) of Article 30 of the Constitution, whether receiving aid out of the State fund or not; or

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(iii) any Nursery and Primary School, Matriculation School, Anglo-Indian School or Oriental School including minority school established and administered under clause (1) of Article 30 of the Constitution, whether receiving aid out of the State fund or not; or
(iv) such other school as may be notified by the Government in this behalf.

Explanation.--For the purpose of this clause,--
(i) Nursery and Primary School shall consist of standards L.K.G. to V;
(ii) Primary School shall consist of standards I to V;
(iii) Middle School shall consist of standards I to VIII or standards VI to VIII;
(iv) High School shall consist of standards I to X or VI to X or IX and X;
(v) Higher Secondary School shall consist of students I to XII, VI to XII or IX to XII.

Section 3(1) Tamil shall be taught as a subject in standards I to X in all schools; in a phased manner, commencing from the academic year 2006-2007 for standard I, from the academic year 2007-2008 for standards I and II and shall be extended upto X standard in a like manner.

(2) For the purpose of sub-section (1), the pattern of education shall be as follows:-

Part-I	Tamil (Compulsory)
Part-II	English (Compulsory)
Part-III	Other Subjects (Mathematics, Science, Social Science, etc.)
Part-IV	Students who do not have either Tamil or English as their mother tongue can study their mother tongue as an optional subject.

2. Pursuant to the Act, the Director of Elementary Education issued the Circular in Na.Ka.No.18640/F1/06 dated 17.6.2006 directing all the District Chief Educational Officers, District Educational Officers, District Elementary Educational Officers, Inspectors of Matriculation Schools, Educational Officers of Anglo-Indian Schools, Educational Officers of Corporation Schools, Assistant Elementary Educational Officers and other Educational Officers to implement the policy decision of the Government in a phased manner from the academic year 2006-2007.

3. One Mr.K.R.Ramaswamy alias Traffic Ramaswamy has filed W.P.No.33953 of 2006 seeking for a direction to the respondents to make necessary changes in the proceedings of the Director of Elementary Education dated 17.06.06 in order to safe guard the interest of the minorities. Likewise, Kanyakumari District Malayala Samajam and Kanyakumari District

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Nair Service Society have filed the W.P.Nos.7879 & 10661 of 2006 respectively seeking for issue of Writ of Declaration, declaring the Act is ultra vires of the Constitution of India.

4. In nutshell, the petitioners are challenging the provisions of the Act on the grounds viz., (i) that the Act is a colourable legislation intended with mala fide intention to take away the rights of linguistic minorities to use their mother tongue as the medium of instruction, which is in contravention of Article 29 of the Constitution; (ii) that the impugned Act curtails the unfettered right guaranteed on the minority institutions under Article 30 of the Constitution to establish and administer educational institutions of their choice.

5. We have heard Mr.K.R.Ramaswamy, petitioner in person, Mr.V.Raghavachari and Mr.V.Madhusudanan, learned counsel, Mr.R.Viduthalai, learned Advocate General for the State and Mr.R.Gandhi, learned Senior Counsel for the impleaded respondent.

6. Before we delve upon the grievance of the petitioners in W.P.Nos.7879 & 10661 of 2006, we are inclined to consider the grievance of the petitioner in W.P.NO.33953 of 2006. The said writ petition has been filed by one K.R.Ramaswamyt @ Traffic Ramaswamy in the public interest. He has approached this Court seeking for a direction to the respondents to make necessary changes in the Circular dated 17.6.2006 issued by the Director of Elementary Education in order to safeguard the interest of the minorities. In our considered view, such a relief cannot be ordered for more than one reason. Firstly, the Circular was issued on the basis of an enactment namely, the Tamil Nadu Tamil Learning Act, 2006 (Act No.13 of 2006) and the petitioner has not questioned the said enactment. Secondly, the petitioner has also not chosen to question the Circular, which was issued pursuant to the above enactment. Thirdly, this Court would not be within its jurisdiction to direct changes in the Circular that was issued in pursuance of an Act, as it would amount to issuance of a direction for amendment of the provisions of the Act. Hence, for this reason W.P.No.33953 of 2006 must fail.

7. So far as the other two writ petitions are concerned, having regard to the submissions as to the challenge to the impugned Act, the following grounds emerge:-

(i) Whether by the impugned Act the right of the minorities guaranteed under Articles 29(1) & 30(1) of the Constitution of India to conserve the distinct language, script and culture of their own and to establish and administer educational institutions of their choice is infringed?

(ii) Can the State, in its wisdom and as a matter of policy, make Tamil language a compulsory subject in all the schools?

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(iii) If so, whether such policy would include the introduction of Tamil as compulsory subject in all schools from standard I onwards?

(iv) Whether the Circular issued by the Director of Elementary Education is violative of Articles 14, 29(1) and 30 (1) of the Constitution of India?

8. The right of a citizen to practice any profession or to carry on any occupation, trade or business is guaranteed under Article 19(1)(g) of the Constitution. The said Article protects the right of all citizens including minorities to practice any profession or to carry on any occupation etc., and such right also includes a right to establish and administer educational institutions of their choice as well. However, the right guaranteed under Article 19(1)(g) is subject to Article 19(6), which contemplates that nothing in sub-clause (g) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause. In other words, in terms of the said Article 19(6), the State is empowered to impose reasonable restrictions by law.

9. Article 29(1) guarantees certain cherished rights of the minorities concerning cultural and educational rights, their language, culture and religion. Article 30(1) contemplates a right on all minorities, whether based on religion or language, to establish and administer educational institutions of their choice. The said Article is basically intended to instill confidence in minorities against any executive or legislative encroachment on their right to establish and administer educational institutions of their choice. Though it is styled as a right, it is more in the nature of protection for minorities. The said Article was enacted as a guarantee that the educational institutions established by minorities should enjoy protection from such legislation which may infringe their rights as such. In effect, it is an additional protection guaranteed to the minorities, apart from the right under Article 19(1)(g).

10. While fundamental right under Article 19(1)(g) is subject to the reasonable restrictions that could be imposed by the State by virtue of the power under Article 19(6), the fundamental right under Articles 29 and 30(1) is subject to the power of the State Government to make regulations to regulate the administration of the institutions.

11. The right guaranteed to religious and linguistic minorities by Article 30(1) is two fold namely, (i) to establish and (ii) to administer educational institutions of their choice. The administration of the educational institutions has certain limitation as it is subject to regulation by the State. One of the questions as to whether, as one aspect of establishing and administering the educational institutions, the minorities could claim any exclusive right to admit the students belonging to a particular minority

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community came up for consideration before the Supreme Court in re: Kerala Education Bill, 1957, AIR 1958 SC 956. While considering the scope of Article 30(1), Chief Justice S.R.Das observed as follows:-

> "The real import of Art.29(2) and Art.30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution. Indeed the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst non-members of the particular minority community. In our opinion, it is not possible to read this condition into Art.30(1) of the Constitution."

> "We have already observed that Article 30(1) gives two rights to the minorities (1) to establish, and (2) to administer educational institutions of their choice. The right to administer cannot obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teacher possessing any semblance of qualification and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason then that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided."

12. In Rev.Sidhajbhai, Sabhai v. State of Gujarat, AIR 1963 SC 540, speaking for the Bench, Shah, J., explained the extent of the regulatory power of the State in the following words:-

> "Unlike Art.19, the fundamental freedom under clause (1) of Art.30, is absolute in terms; it is not made subject to any reasonable restrictions of the nature the fundamental freedoms enunciated in Art.19 may be subjected to. All minorities, linguistic or religious have by Art.30(1) an absolute right to establish and administer educational institutions of their choice;

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> and any law or executive direction which seeks to infringe the substance of that right under Art.30(1) would to that extent be void. This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right. The fundamental freedom (sic right) is to establish and to administer educational institutions; it is a right to establish and administer what are in truth educational institutions - institutions which cater to the educational needs of the citizens, or sections thereof. Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substances of the right which is guaranteed; they secure the functioning of the institutions, in matters educational."

The Supreme Court has thus recognised the right of the State to prescribe reasonable regulations to ensure the excellence and to make regulations in the true interests of efficiency or instruction.

13. Whether such power of the State to make regulations could be extended to a policy to make Tamil as compulsory subject in all the schools from standard I onwards is the question to be considered. In N.Ammad v. Emjay High School, AIR 1999 SC 50, the Supreme Court while considering this aspect has stated as follows:-

> "Though the right guaranteed under Article 30(1) to establish and administer is absolute, such right will not preclude the State to make regulations in the true interests of efficiency or instruction without offending the right of the minority students to learn through their mother tongue as well, as such regulations are not restrictions on the right guaranteed by the Constitution on the minorities. However, the regulations must satisfy the dual tests namely, the test of reasonableness and that it does not result in minority educational institution losing their character."

14. The Supreme Court in Bihar State Madarasa Education Board, Patna v. Managing Committee of Madarasa Hanfia Arabic College, Jamalia, (1990) 1 SCC 428, has held as follows:-

> "This Court has all along held that though the minorities have right to establish and administer educational institution of their own choice but they

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have no right to maladminister and the State has power to regulate management and administration of such institutions in the interest of educational need and discipline of the institution. Such regulation may have indirect effect on the absolute right of minorities but that would not violate Art.30 (1) of the Constitution as it is the duty of the State to ensure efficiency in educational institutions.....Minority institutions cannot be allowed to fall below the standard of excellence on the pretext of their exclusive right of management....."

15. The power of the State to make provisions for the regional language as one of the medium of instruction has been recognised by the Supreme Court in the judgment in English Medium Students Parents Association v. State of Karnataka and others, (1994) 1 SCC 550. In that case, under the perspective of promotion of Kannada, the Government of Karnataka appointed a Committee of six persons with Dr.V.K.Gokak as the Chairman and referred three questions, out of which one question was "would it be proper to have Kannada as a compulsory subject as per the three language formula and should the option of selecting the remaining two languages be left to the students themselves?" In its report, the Committee recommended that Kannada should be introduced as a compulsory subject for all children from III standard and thereafter, Kannada should be the sole first language for the Higher Secondary Schools i.e., VIII, IX and X standards. Based on the above report, the Government of Karnataka directed Kannada or mother tongue as first language from standard III from the academic year 1982-83. Ultimately, the issue as to whether the State Government could issue such an order making Kannada as a compulsory subject from standard III came up for consideration before the Supreme Court. The challenge was that the Government Order was violative of Articles 29 & 30 of the Constitution and the infringement of the right guaranteed under Article 350-A was apparent on the face of the Government Order as it prevented linguistic minority group to avail the opportunity of choices of languages. On consideration of the issue, the Supreme Court has observed as follows:-

"20. All educational experts are uniformly of the opinion that pupils should begin their schooling through the medium of their mother tongue. There is great reason and justice behind this. Where the tender minds of the children are subject to an alien medium the learning process becomes unnatural. It inflicts a cruel strain on the children which makes the entire transaction mechanical. Besides, the educational process becomes artificial and torturous. The basic knowledge can easily be garnered through the mother tongue. The introduction of a foreign language

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tends to threaten to atrophy the development of mother tongue. When the pupil comes of age and reaches the Vth standard level, the second language is introduced. The child who has not taken Kannada as a first language is required to take it as a second language. At the secondary stage the three language formula is introduced. However, in cases of non-Kannada speaking students grace marks upto 15 are awarded. Certainly, it cannot be contended that a student studying in a school from Karnataka need not know the regional language. It should be the endeavour of every State to promote the regional language of that State. In fact, the Government of Karnataka has done commendably well in passing this GO. Therefore, to contend that the imposition of study of Kannada throws an undue burden on the students is untenable. Again to quote Mahatma Gandhi:

> "The medium of instruction should be altered at once and at any cost, the provincial languages being given their rightful place. I would prefer temporary chaos in higher education to the criminal waste that is daily accumulating."

23. As rightly contended by the learned Advocate General where the State by means of the impugned GO desires to bring about academic discipline as a regulatory measure it is a matter of policy. The State knows how best to implement the language policy. It is not for the Court to interfere. In Hindi Hitrakshak Samiti v. Union of India, (1990) 2 SCC 352, this Court laid down as under:

> "It may be that Hindi or other regional languages are more appropriate medium of imparting education to very many and it may be appropriate and proper to hold the examinations, entrance or otherwise, in any particular regional or Hindi language, or it may be that Hindi or other regional language because of development of that language, is not yet appropriate medium to transmute or test the knowledge or capacity that could be had in medical and dental disciplines. It is a matter of formulation of policy by the State or educational authorities in charge of any particular situation. Where the existence of a fundamental right has to be established by acceptance of a particular policy or

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> a course of action for which there is no legal compulsion or statutory imperative, and on which there are divergent views, the same cannot be sought to be enforced by Article 32 of the Constitution. Article 32 of the Constitution cannot be a means to indicate policy preference."

Having held so, the Supreme Court ultimately found that the introduction of Kannada as a compulsory subject was a matter of policy. Holding so, the Court declined to interfere and the challenge to the Government Order was repelled.

16. Again a similar question came up for consideration before the Supreme Court in Usha Mehta and others v. State of Maharashtra and others, (2004) 6 SCC 264. In that case, the State of Maharashtra directed the Marathi language study as compulsory throughout the schools in the State. The said decision of the Government was questioned by English medium schools run by Gujarathi linguistic minorities on the ground that they were compelled to teach four languages namely, Hindi, English, Marathi and their mother tongue Gujarathi. The challenge was again on the ground of infringement of the fundamental rights guaranteed under Article 29(1) and 30(1) as also Article 19(1)(a) as well as Articles 19(1)(e), (g) and 21 of the Constitution. While considering the power of the State to impose reasonable restrictions, the Supreme Court in paragraph 10 has observed as follows:-

> "10. In the light of the above discussed cases, it is clear that the State can impose reasonable regulations on the institutions covering (sic) Article 30 for protecting the larger interest of the State and the nation. The 'choice' that could be exercised by the minority community or group is subject to such reasonable regulations imposed by the State. While imposing regulations, the State shall be cautious not to destroy the minority character of institutions. It is not the case of the petitioners herein that the respondents prevented them from teaching Gujarati language. On the other hand, they are only challenging the compulsory imposition of Marathi language for students and asking for a right "not to learn" Marathi language while living in the State of Maharashtra. The regulation in this case imposed by the State of Maharashtra upon the linguistic minority right is to make Marathi language a compulsory course in school syllabi. The issue for resolution here is to find whether this action is reasonable or not. The impugned policy decision was taken by keeping in view the larger interest of the State, because the official and common

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business are carried on in that State in Marathi language. A proper understanding of Marathi language is necessary for easily carrying out the day-to-day affairs of the people living in the State of Maharashtra and also for proper carrying out of daily administration. Hence the regulation imposed by the State of Maharashtra upon the linguistic minorities to teach its regional language is only a reasonable one. This Court ruled that the right of minorities to establish and administer educational institutions of "their choice" under Article 30(1) read with Article 29(1) would include the right to have choice of medium of instruction. (See generally the Constitution Bench decisions in *D.A.V. College v. State of Punjab* and *D.A.V. College v. State of Punjab.*) But this exercise of "choice" of instructive language in schools by the linguistic minorities is subject to the reasonable regulation imposed by the State concerned. A particular State can validly take a policy decision to compulsorily teach its regional language. (See also *English Medium Students Parents Assn. Case.)* In our opinion, the impugned decision taken by the Government of Maharashtra is within the regulatory ambit of Article 30. It is a reasonable one, which is conducive to the needs and larger interest of the State."

In the very same judgment, the Supreme Court negatived the contentions of the petitioners therein, namely that "the Articles 29 & 30 could be read in such a way that they contain a negative right to exclude learning of regional language." In para 11, the Supreme Court held as follows:-

"11. It is difficult to accept the proposition advanced by the petitioners that minority character would only be protected by learning Gujarati as a first or second language. There is enough opportunity, in the impugned school syllabi, for students in English-medium schools run by Gujarati minority group to offer Gujarati language as a composite subject. Students who want to learn Gujarati language can certainly learn it even according to the present scheme in English-medium schools. It is also open to the Gujarati Minority community to run exclusive Gujarati-medium schools subject to the regulation of teaching Marathi language. But it won't be in the fitness of things to establish English-medium

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> schools and asking for not teaching the regional Marathi language. It is difficult to read Articles 29 and 30 in such a way that they contain the negative right to exclude the learning of regional language. Ipso facto it is not possible to accept the proposition that the people living in a particular State cannot be asked to study the regional language. While living in a different State, it is only appropriate for the linguistic minority to learn the regional language. In our view the resistance to learn the regional language will lead to alienation from the mainstream of life resulting in linguistic fragmentation within the State, which is an anathema to national integration. The learning of different language will definitely bridge the cultural barriers and will positively contribute to the cultural integration of the country. In our view, the impugned policy decision is in the paramount interest of the students who are living in the State of Maharashtra and also in the larger interest of the country. Therefore, we cannot rule that the impugned policy will result in destroying the minority character of the Gujarati community in Maharashtra."

17. In fact in the above judgment, the introduction of the regional language as compulsory subject from standard V had been recognised by the Supreme Court, as the Court observed that the learning of different languages will definitely bridge the cultural barriers and will positively contribute to the cultural integration of the country. Such an impugned policy cannot be ruled that it will result in destroying the minority character of an institution. With the above observation, the Supreme Court held that the policy decision was not violative of the linguistic minority rights guaranteed under Articles 29 and 30 or any other provisions of the Constitution.

18. A careful reading of the above judgments would undoubtedly disclose the following principles on the issue namely, that the minorities have a fundamental right to establish and administer educational institutions of their choice and such right is subject to the power of the State to prescribe reasonable regulations to ensure excellence in the true interests of efficiency or instruction. Regulations can also be made to promote the regional language of the State. However, such regulations must stand to the scrutiny of reasonableness and it must be in the true interests of efficiency or instruction without offending the right of the minority students to learn their mother tongue as well. Though the right of minorities to establish and administer educational institutions of "their choice" would include the

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right to have the choice of medium of instruction, the said exercise of choice of instructive language in schools by the linguistic minorities is subject to the reasonable restrictions imposed by the State and a particular State can validly make a policy decision to compulsorily teach its regional language.

19. The above discussion takes us to the core issue as to whether by making Tamil as compulsory subject from standard I onwards, the State Government has intruded into the power of the minorities to establish and administer educational institutions of their choice and consequently, the children belonging to the minority community would be compelled to learn Tamil which is not their mother tongue. Learned counsel for the petitioners heavily relied upon the Full Bench judgment of the Karnataka High Court in General Secretary, Linguistic Minorities Protection Committee and another etc., v. State of Karnataka and another (AIR 1989 Karnataka 226. That case arose when the State Government of Karnataka made an order prescribing that Kannada should be the sole first language at the secondary school level from the academic year 1987-88, leaving choice to the students in respect of only two other languages out of the list of languages, in which Kannada is also one of them. The order also directed the teaching of Kannada shall be compulsory from the first year of the primary school in non-Kannada schools and to children whose mother tongue is not Kannada with immediate effect. The said order was questioned on the ground that it was violative of the fundamental rights guaranteed to the minority institutions under Articles 29(1) and 30(1) of the Constitution and also was violative of the pledge of equality guaranteed under Article 14 of the Constitution. The Full Bench observed that "there is complete unanimity on the topic of primary education and the opinion is that the children must be provided with facility to have their primary education in their mother tongue and the parents are entitled to choose the language of their choice in the schools. As the said Government Order made compulsory Kannada as the sole language from standard I onwards, the Full Bench found that it was throwing the burden on the students belonging to minority community to study another language whose mother tongue is not Kannada at the primary level and it deprives them of the very useful periods required for development of their personality and therefore subjects them to hostile discrimination". The Bench also found that the imposition of Kannada as sole language from standard I is violative of Articles 29 and 30 of the Constitution. However, after answering the issues, the Full Bench further directed as follows:-

> "The Government shall, however, be at liberty (a) to introduce Kannada as one of the two languages from the primary school class from which study of another language in addition to mother tongue is made obligatory as part of general pattern of primary education and (b) to make study of Kannada compulsory as one of the three languages for study in secondary schools,

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by making appropriate order or rules and make it applicable to all those whose mother tongue is Kannada and also to linguistic minorities who are and who become permanent residents of the State in all primary and secondary schools respectively."

Pursuant to the above opinion, the matter was sent back to the Division Bench for disposal in accordance with the opinion and, accordingly, the cases were dismissed by a judgment dated 25.1.89. Questioning the said judgment, State of Karnataka went before the Supreme Court and the issue was considered and disposed of in the judgment in English Medium Students Parents Association (supra). While the matter stood for consideration by the Supreme Court, in view of the liberty given to the State of Karnataka, a subsequent Government Order dated 19.6.89 came to be passed and a corrigendum came to be issued on 22.6.89, which reads as follows:

"For para (i) of Order portion of the abovesaid Government Order dated June 19, 1989 i.e., from the words 'From Ist standard....subject to study' the following para shall be substituted:

"From Ist standard to IVth standard, where it is expected that normally mother tongue will be the medium of instruction, only one language from Appendix I will be compulsory subject of study."

The Supreme Court on consideration of the above Government Order observed that the Government Order would clearly indicate that the element of compulsion at the primary stage is no longer there because the Government Order is unequivocal when it says from Ist to IVth standards mother tongue will be the medium of instruction, only one language from Appendix I will be compulsory subject of study and from IIIrd standard onwards Kannada will be an optional subject for non-Kannada speaking students.

20. In the light of the above, certain observations of the Full Bench is referable. Though the Full Bench in the judgment cited supra has declared the impugned Government Order that was put in issue before it, was discriminatory, ultra vires of Articles 29(1) and 30 of the Constitution, in paragraph 51, it observed as follows:-

"Therefore, we make it clear that this State being a unilingual State of Kannda speaking people, Kannada can be made a compulsory language for study from the senior primary class and as one of the three languages in the high schools and such a provision would not be violative of Art.29, for, it does not in any way interfere with the right of the minorities to develop their script and language. It

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would also be not violative of Art.30 as it would be a reasonable regulation and in the interests of minorities who are permanent residents of this State. If such an order is made, while it would be open for the students belonging to linguistic minorities to take Kannada as the first language at their option if not they would be under an obligation to study Kannada as one of the three languages in the high schools. Further, if a minority institution is receiving State aid the institution cannot deny admission to such students who desire to study Kannada as the first language in view of Art.29(2)."

21. In view of the above position, it is now settled that the State is empowered to regulate the medium of instruction by introducing the mother tongue as compulsory subject from standard IV onwards and the introduction of mother tongue as compulsory subject would not be violative of Articles 29(1) and 30(1) of the Constitution of India and is also not discriminatory.

22. This leads us to the further question as to whether the State could make Tamil as compulsory subject from standard I in all schools. The imposition of Tamil as compulsory subject should be considered with reference to the burden on the students and as to whether the same deprives a student of minority community to learn his mother tongue as well. After the States Reorganisation had taken place in the year 1956, Tamil language is used to be prevalent throughout the State for the last over more than 50 years. Though Tamil is the mother tongue for most of the residents in the State, due to its long prevalence among various communities, it has become a home language and as well a dominant language of the people residing in the State irrespective of their community, whether minor or major. The introduction of Tamil as a compulsory subject should be viewed with the above background. The impugned Act introducing Tamil as one of the subjects cannot be considered to be one on the basis that it is a mother tongue of the State.

23. The importance of education from the primary level of education has a bearing for a decision on the issue. Education based knowledge and learning is one of the greatest gifts of mankind to its progeny. Education creates self-confidence and self-realisation. Education is a process of man-making. As education is directed to development of a child's personality, talent and ability, it must be inculcated through its mother tongue or home language even at the primary education as such. The major objective of the primary school stage of education is to lay a strong foundation for literacy including basic numeracy. Basic literacy and numeracy are in fact the fundamental basic skills needed for learning at all stages and ages. Creation of confidence and knowledge should not be on "note learning", but it should be on "clear

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understanding". Such an understanding is possible if a child starts learning through its mother tongue or home language from the beginning.

In the words of Swami Vivekananda, "Education" means as follows:

> "Education is not the amount of information that is put in your brain and runs riot there, undigested, all your life. We must have life-building, man-making, character-making assimilation of ideas".

24. The national policy on education (1986) laid emphasis on equity and social justice in education to promote the country's unique socio-cultural identity and to contribute the national cohesion, promoting tolerance, scientific temper and the concerns enshrined in the Constitution. Based on the above policy, the school curriculum in 1988 was formulated and designed to enable the learners to acquire knowledge to develop concepts and inculcate values commensurate with the social, cultural, economic and environmental realities at the national and international levels. The social values aimed at were friendliness, cooperativeness, compassion, self-discipline, courage, love for social justice, etc. Besides, curriculum in schools should develop the key qualities like regularity, punctuality, cleanliness, self-control, industriousness, sense of duty, desire to serve, responsibility, enterprise, creativity, sensitivity to greater equality, fraternity, democratic attitude, etc.

25. A Committee appointed to highlight the importance of education headed by S.B.Chavan submitted a report that was placed in Parliament during February, 1999 highlighted value based education. In the said report, it is stated as follows:

> "Education should aim at multifaceted development of a human being - his intellectual, physical, spiritual and ethical development. The minds, hearts and hands of children are to be engaged in forming their own character to know what is 'good', 'love good' and 'do good'. The report lays emphasis on inculcation of certain values on children".

The report observed that "it was generally felt that ours is a vast and diverse ancient country historically, geographically and socially. Traditions are different, the ways of thinking and living are also different. But there are certain common elements which unite the country in its diversity. This country has a long tradition. Here from ancient times, there have been great saints and thinkers from different religions and sects who have talked about some eternal values".

The Chavan's report referred to the primary school education as well. The report in this regard is as follows:

> "Primary school stage period in a child's life when the seed of value education can be implanted in his/her impressionable mind in a very subtle way.

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> If this seed is nurtured by the capable hands of dedicated teachers in schools, if they insert values at appropriate intervals during a child's school life, it can be easily said that half the battle in building up national character has been won".

It is very essential that at the school life right from primary stage, deliberate, planned and sustained efforts are made to inculcate basic human values among the students. As intellect is one of the domains of human personality, it can be achieved by inculcating the same through the mother language or the home language or a dominant language of the State even from the very inception of a child into the school from standard I onwards.

26. A recent study on the Intelligence Quotient (IQ) on children may throw some light as to whether the imposition of Tamil as compulsory subject from standard I would be a burden on the students. Amanda Woodward, Assistant Professor in Psychology, Doctorate in Psychology of Infant Education, Stanford, after a series of studies observed that "children begin to develop reasoning skills as young as seven months of age and are able to comprehend words equally well at 13 months, as they do at one month, when they begin to speak with an expanded vocabulary".

27. A recent study on Intelligence Quotient (IQ) portrays an important picture. The term intelligence is referred to mean a very general mental capability that, among other things, involves the ability to learn, reason, plan, solve problems, think abstractly, and comprehend concepts and ideas. It is not merely a reflection of book learning, good grades, or test-taking know-how. Rather, it reflects a broader ability to comprehend your environment-"getting it", "catching on", "getting to the bottom" of things, or "figuring out" what to do". Among several different types of intelligence, one of which is "adaptive intelligence", which relates to the child to learn and accommodate to the demands of its surrounding. The report suggests that 'adaptive intelligence' is possible even at the stage of inception of a child in school.

28. Imparting education to a child through a dominant language of the State at the very inception to the school shall have the following advantages namely, (a) a child becomes familiar with his/her mother tongue when he/she moves with the fellow students; (b) a child will become confident as user in mother tongue; (c) the introduction increases the child's learning capacity; and (d) it also increases a child's communicative skills.

29. A study on language planning for beginners even in English conducted by University of East London was made, revealed that "the beginners are developing their basic communicative skills in English. Children will only learn if they understand. This sort of curriculum in the foundation

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stage - which ideally offers children a host of meaningful activities in which the meaning is embedded - is excellent for helping children develop their communicative skills in English". Referring to the academic language proficiency Cummins, J., observed that students are required to understand linguistically and conceptually demanding texts in the content areas and to use language in an accurate and coherent way in their own writing. He refers to the above as academic language proficiency, the ability to understand and produce increasingly complex oral and written language at the primitive stage.

30. The standard and excellence of education are not part of management as such. The standard and excellence concern the body politic and are dictated by considerations of the advancement of the country and its people. It is common knowledge that teaching through the language i.e. mother tongue or Home language of the State which is largely prevalent in that State would be ideal and will yield the desired results to achieve the standard and excellence. The language extensively prevalent and used in the State is 'Tamil' apart from other languages spoken in the State.

31. The Act contemplates only a three language formula. Learning of Tamil is made compulsory in Part-I and English is made compulsory in Part-II. By the provision of Part-IV of sub-section (2) of Section 3, "students who do not have either Tamil or English as their mother tongue can study their mother tongue as an optional subject". The educational policy adopted by the State Government contemplates the learning of Tamil as a language from standard I onwards from the academic year 2006-2007 apart from the core subjects through the medium of choice of the students. Section 3(2) of the Act, while making Tamil as compulsory subject, does not restrict the minority students to learn their mother tongue as well. In the absence of any such restriction, it cannot be contended that the right guaranteed under Article 30(1) is being infringed.

32. The challenge to the impugned Act should also be considered in the light of the right of the minority institutions to establish and administer educational institutions of their choice on the one hand and the right of the State Government to regulate such administration of the institutions keeping in mind the policy of the Government to introduce Tamil as a compulsory subject from standard I onwards on the other hand. Both the power should be read conjointly. The minorities cannot claim an absolute privilege and right to impart education through their mother tongue only. It cannot also insist that by virtue of such right the State has no power to introduce any language other than the mother tongue of the minority community. Likewise, at the guise of the power to regulate, shall not do anything that results in minority educational institutions losing their character. The Court must place a harmonious interpretation while interpreting the right of the State to regulate vis-a-vis the right of the minorities to establish and administer

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the educational institutions. In case the State evolves a policy on an overall assessment, a decision based on such policy shall not be interfered with. The Supreme Court in the judgment in Kesavananda Bharati Sripadagalvaru v. State of Kerala, AIR 1973 SC 1461, while considering the policy adopted by the educational authorities in the matters of permitting the starting of new school or of an additional school in a particular locality or an area, had observed as follows:-

> "The question of policy is essentially for the State and such policy will depend upon an overall assessment and summary of the requirements of the residents of the particular locality and other categories of persons for whom it is essential to provide facilities for education. If the overall assessment is arrived at after a proper classification on a reasonable basis, it is not for the Court to interfere with the policy leading to such assessment."

33. Though Article 30 does not lay down any limitations upon the right of the minority to administer educational institutions, the said right is not absolute and it is subject to reasonable restrictions issued in State interest. What could be the State interest is a policy of the Government to decide on various considerations. It is well accepted that the Courts can take into consideration the matter of common knowledge and presume that the legislature understand and correctly appreciate the needs of its own people and particularly the interest of the students themselves. A legislation with the above understanding culminated into one of the policy of the Government is neither unreasonable nor arbitrary.

34. While judging the constitutionality of the provision, the Court must also keep in mind the scheme of the Act. It is not as if the Tamil language is introduced as a compulsory subject in Part-I of Section 3 of the Act to students of all standards simultaneously at one stretch. The scheme contemplates that the Tamil is made compulsory language for the students of standard I commencing from the academic year 2006-2007. Those students should learn Tamil as compulsory language from the second academic year viz. 2007-2008 and for their next academic year they should learn Tamil as compulsory language from standard III. Likewise, the students who have been admitted for the academic year 2006-2007 should start learning Tamil as compulsory subject in Part-I and learn the same as a compulsory language till he goes to standard X. By the above process of introduction of Tamil as compulsory language in Part-I in a phased manner from standards I to X, a student who is taught Tamil from standard I is not over burdened and could learn the Tamil language at ease.

35. Extensive power is vested in the Parliament to legislate with respect to the coordination and determination of standards in higher education or research or scientific and technical institutions traceable under items 63 to 66 of

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List I, more precisely to the coordination and determination in item 66. The power of the State to legislate in respect of education is traceable to Entry 25 of List III. As per the Entry, the State is empowered to legislate on education including technical education, medical education and universities, subject to regulations in Entry 63, 64, 65 and 66 of List I. The power of the State to legislate the medium of instruction in the institutions of primary and secondary education is therefore traceable to the said Entry. The power to legislate in respect of medium of instruction in primary education shall vest in the State. The said power of the State includes the power to legislate imposing reasonable regulations keeping in mind the excellence in minority educational institutions as well.

36. As the State has the duty to keep in mind the welfare of the child to develop its personality in the formative years, a policy decision taken by the State to make Tamil as compulsory subject from standard I onwards cannot be considered to be unreasonable and it should be only in the interest of the children of the State who are familiar with the home language/dominant language of the State that includes mother tongue as well. It appears that the State Government had taken the policy decision to make Tamil language compulsory from the standard I onwards keeping in mind that a proper understanding of the Tamil language is absolutely required for smooth running of the day-to-day affairs of the people living in the State and for carrying out the daily administration, particularly, when the official and common business in the State is carried in Tamil language only.

37. It is ultimately for the legislatures to take a decision on the educational policy one way or the other and it is not for the province of the Court to decide on good or bad points of such policy, as the jurisdiction of the Court is limited to intervene in the implementation of the policy only when such policy is found to be against any statute or the Constitution. As we find no infringement of Articles 29 and 30 of the Constitution of India by introduction of Tamil as compulsory subject from standard I onwards, the challenge to the impugned Act must fail.

38. In view of the above discussions, we hold that the impugned legislation is not colourable exercise of power intended with any mala fide intention to take away the rights of the minorities to use their mother tongue as a medium of instruction and it does not in any way curtail the rights guaranteed on the minority institutions under Articles 29(1) & 30(1) of the Constitution of India. The impugned legislation

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is neither unreasonable, discriminatory nor it results in minority institutions losing their character. Hence, the challenge to the impugned Act must be negatived. Accordingly, the writ petitions fail and they are dismissed. Consequently, M.P.No.1 of 2006 in all the writ petitions are also dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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W.P.Nos.33953, 7879
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